

Original (10-3)

ADDRESS BY SENATOR STROM THURMOND (D-SC) ON PROPOSED EXTENSION
OF CIVIL RIGHTS COMMISSION, SEPTEMBER 14, 1959.

Mr. President, I am convinced beyond any shadow of a doubt /
that the Senate is making no contribution to the welfare of the
country /by even considering an extension of the Civil Rights
Commission. The consideration of such an extension would have been
even more unfortunate had it been undertaken without having
available to us the report of the Civil Rights Commission.

In reading the report of this Commission, Senators should
keep in mind that this is the report of a commission which was
promoted as a group which would deal exclusively with voting rights.
I do not believe that any of us were deceived in 1957, and I know
that I was not so deceived. The Commission has, of course,
presumed to enter into a discussion of race relations in the fields
of education and housing, as well as voting. Obviously, the
information on which the Commissioners base their discussion could
not be dignified by calling it a study.

I shall review briefly what I can only describe as the
illogical ramblings and babblings of unsound thinking; and from
time to time, I shall also note with pleasure that there are those
among the Commissioners who indicate by their individual opinions
and statements contained in the report that they, unlike the staff
and the other Commissioners, have not completely lost touch with
reality.

In the field of voting the Commission made a total of five
so-called findings and recommendations. I shall merely note at
this point that Commissioner Battle's dissent on all five findings
and recommendations indicates that the Commission was not without
a rational thinker among its group, had it chosen to follow the

leadership of good judgment and clear thinking.

The first finding of the Commission in the field of voting is believable to me. Obviously, the Commissioners who joined in the remaining findings and recommendations in the voting area did not believe it themselves, however, for if they had, they could have drawn no conclusions whatsoever--much less any recommendations.

I quote the first two sentences of the first finding of the Commission:

"The Commission finds that there is a general deficiency of information pertinent to the phenomenon of non-voting. There is a general lack of reliable information on voting according to race, color, or national origin, and there is no single repository of the fragmentary information available."

It is obvious that if one believes that this finding of the Commission is correct, it would be senseless to attach any credibility to any additional part of the Commission's report on voting.

The Commission recommends that the Bureau of Census undertake a nation-wide compilation of registration and voting statistics to include a count of individuals by race, color, and national origin who are registered and the frequency of their voting in the past ten years.

Mr. President, I heartily indorse this recommendation. I do not believe that anyone could conceive of a more practical and a more suitable replacement for the Civil Rights Commission than the census suggested by the Commission itself. It should be quite apparent that until the information which the Commission finds to

be practically non-existent can be compiled, no sensible study nor logical conclusion can be accomplished.

Mr. President, had the Commission stopped at this point in its report, it would have accomplished more good than I have ever conceived that it could do. I say this with full awareness that the Commission's conclusion, arrived at after two years of existence, could have been reached by any logical man after a few casual inquiries. Unfortunately, the Commission did not stop at this point; and in the remainder of the report, those of the Commission who advance specific proposals confirm beyond a doubt that this Commission has contributed and is contributing more to racial unrest, tension and bad relations than any other force or factor which has been conceived by Congress in modern times.

Now, Mr. President, let us look at other so-called findings and recommendations of the Commission, concerning which the Commission has admitted there is practically no information available on which to base any finding or recommendation. Some of the Commissioners--~~XXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXX~~--made a finding that there is a lack of uniformity of laws with respect to the preservation of voting records.

Mr. President, this is indeed a profound revelation. It is profound in spite of the fact that it is what our forefathers and the drafters of the Constitution intended in the first place, and what is basically inherent in our whole system of government, in the second place. The very fact that we do not yet have a totalitarian government should have been enough in itself to indicate that the States still had the right to have differences in their laws on a

subject which is exclusively within the sovereign power and authority of each of the several States.

It is in the recommendation, Mr. President, that either the utter irresponsibility, or abysmal ignorance, of those Commissioners who joined in this recommendation stands out. These Commissioners recommended that the Federal Government enact legislation requiring the maintenance of all voting records for a period of five years and that such voting records be open to public inspection. Such a statute would obviously be unconstitutional, but the remainder of this report proves unquestionably that such a consideration plays no part in the judgment of the avid integrationist members of the Commission.

The third item listed as a "recommendation" under the discussion of voting is, to say the least, a confusing compilation of words lacking not only a complete thought, but any thought at all. The discussion called "background", when combined with the so-called findings, convey a rather hazy impression that the Commission is lamenting the fact that some private citizens do not choose to serve on registration boards.

This discussion mentions the fact that in some instances, some members of the boards resigned their post, and State officials responsible for filling the vacancies have delayed in doing so. The Commission concludes that such conduct, presumably by the resignees and the State officials, is "arbitrary, capricious and without legal cause or justification." To remedy the situation, if indeed the Commission has any particular situation in mind, the Commission recommends that an additional section be added to

Part IV of the so-called Civil Rights Act of 1957 to prohibit any person from being a non-feasor "under color of State law, arbitrarily, without legal justification or cause," if any such non-feasance results in somebody being unable to register. Consideration of the lack of constitutional authority for the Federal Government to interfere in State matters is again belied by this so-called recommendation.

The next discussion of the Commission included under the topic of voting has nothing whatsoever to do with voting--and this, incidentally, is in line with the organization of the rest of this report and the thinking which spawned it. At this point the report goes into the matter of witnesses who decline to testify before this insidious body. As in so many instances, the so-called recommendations have, not surprisingly, attempted to justify expanded authority for the Commission. In this particular instance, those of the Commission--~~however many they were~~ who joined in this recommendation, would have the Commission authorized to apply directly to the appropriate United States District Court for orders enforcing subpoenas where the subpoenaed person declined to testify.

After this diversion into matters more extraneous even than the other parts of the report, the Commission returned to a discussion of persons declining to serve on registration boards. At this point, there is an additional so-called recommendation which surpasses by a considerable extent in complete disregard of the Constitution and our federated republican form of government anything that has come previously in the report. This proposal is

for the appointment of a federal registrar who would determine what persons under the terms of State law were eligible to vote and would dictate the registration lists to the State boards of registration. Such a proposal would not only be unconstitutional, but would, in fact, establish a federal dictatorship--if indeed it could be enforced. One would think that the authors of such a proposal were existing mentally in Reconstruction days and writing regulations for the conduct of civil affairs by the occupying Union troops. It might come as a surprise to the authors of this proposal and others of a similar mind, but the fact is that the South is no longer a conquered province. Further, the South has never been, nor will it ever be, conquered by the enactment of such proposals.

Next, the report, apparently for the first time, acknowledges the existence of the United States Constitution and, even more surprisingly, the acknowledgment is by the three most avid integrationist Commissioners. Their acknowledgment, however, is only in passing and for the sole purpose of zeroing in on the target they forewith propose to destroy. Their proposal for destruction embodies a constitutional amendment which would transfer all substantial control and authority over the eligibility of voters from the States, where it now resides, to the Federal Government, where it can only reside in tyranny.

I would note at this point that three of the Commissioners opposed the proposal of such a constitutional amendment, and it is to their everlasting credit that they recognize the inherent danger of such a proposal.

Before passing from this particular proposal, it is worthy to note, in connection with the rationale which prompted the

proposal, how the three avid integrationists justified the elimination of any literacy tests from voting eligibility requirements.

First, the Commission noted that the march of education has almost eliminated illiteracy. This they followed with the following unbelievably unrealistic rationale:

"In a nation dedicated to the full development of every citizen's human potential, there is no excuse for whatever illiteracy that may remain. Ratification of the proposed amendment would, we believe, provide an additional incentive for its total elimination. Meanwhile, abundant information about political candidates and issues is available to all by way of television and radio."

Such shallowness of mental process could only stem from the deepest of bias.

Mr. President, before turning to the next portion of what someone in a fit of delusion has mistitled a "report", I would remind the Senate that the first so-called finding under the voting section recognizes that there is an almost complete absence of information on this particular subject. Nothing could better prove the truth of this first so-called finding than the remainder of the section on voting.

In the portion of the report which purports to deal with the field of so-called civil rights and education, the Commission does not find, but certainly indicates by its language, that there is also a dearth of knowledge--in the minds of those who wrote this report, at least--on this particular feature. The initial so-called

finding on education by some Commissioners--again, there is no way of telling how many--is to the effect that there is no "guidance" for those communities or school officials who might desire to integrate their schools. This is followed by what is titled a "recommendation" that the Civil Rights Commission be authorized to collect and make available various schemes for integrating the races in the public schools, in addition to authorizing the Civil Rights Commission to establish an "advisory and conciliation service" for school integration.

Mr. President, in my State at least, I can assure the Senate that there is no desire--much less demand--for the advice or conciliation efforts, nor for the integration schemes, of this or any other federal commission. I doubt seriously whether any such desire exists anywhere. This is just another of those self-serving, self-perpetuating, empire-building justifications.

The only other proposal which is titled a "recommendation" in the field of education is to the effect that the Office of Education and the Bureau of Census conduct a school census to show the number and race of students in public schools. This proposal is included as an answer to the surprising finding that in agencies of the Federal Government and in most State agencies, the records are not kept separate on the basis of race so that there is no way in which to tell how many of the students are of what color. The agitators in the race relations field have long demanded, and apparently finally achieved, the abolition of a most practical and realistic device--the indication of a person's race on his record. Rather than acknowledge that the abolition of this practice was a

mistake in the first place, the race agitators would now have the records duplicated with the accent on race by a federal agency. Quite frankly, Mr. President, such mental gymnastics repulse me.

Once again, Mr. President, the three avid integrationists on the Commission take off on their own proposals on education at this point in the report. In effect they would have all financial assistance of the Federal Government tied to integration practices in--and I quote--"both publicly and privately supported" institutions of higher education. Even if the Fourteenth Amendment did apply in such a way that public segregated schools could not be maintained and this is emphatically not the case--even the errant and constitutionally unconscious occupants of the Supreme Court admit that the Fourteenth Amendment applies only to State action; and indeed in the discussion of their own proposal, these three Commissioners parrot the words "only State action" but apparently without the slightest understanding of the meaning of this phrase.

The remaining three members of the Commission wrote their best dissent on this point, stating that they could not "endorse a program of economic coercion" and that this proposal which dealt with institutions of higher education was completely without the jurisdiction of the Commission under the terms of the Act by which it was created. The dissent also reveals that the staff studies of the Commission were limited exclusively in the field of education to elementary and secondary public schools, not private at any level, nor institutions of higher education, whether public or private. This is but another indication, if indeed any additional indication is necessary, that the entirety of the report is a matter of conjecture rather than any intelligent studious approach.

On the subject of housing, I gather that although there are a number of proposals which are entitled recommendations contained in this section of the report, none of them has the support of a majority of the Commission, and, therefore, could hardly be considered recommendations. The proposals themselves are confusingly worded, ineptly expressed, and hazy in content.

One of the so-called findings which should be of particular interest to the Congress is the fact that the Federal Government plays a major role in housing. I am happy to note that by virtue of this body's action recently, the Federal Government will play a slightly less major role in housing this year than was earlier supposed.

The proposals themselves are easily summarized. They would have the President issue Executive Orders to enforce integration of the races in housing in which the Federal Government had any part or participation. In addition, the proposals would have the Federal Government go much further into the fields of public housing and urban renewal.

These proposals are no surprise to me. I have long realized that the race agitators propose to use housing as a tool to mix the races. The three members of the Commission who dissented summed up the proposals quite aptly as suggesting "fixed programs of mixing the races anywhere and everywhere regardless of the wishes of either race." In their proposals the avid integrationists on the Commission spell out the methods by which housing can be used to integrate the races. These are interesting to note because their use is more^{often}/by surreptitious means, and here we have them spelled out in the open. For instance, they would adopt a policy

of "scatteration" in public housing by sprinkling public housing units throughout residential areas and installing in them persons of a race different from those living in the community. In this connection it is interesting to note that these Commissioners are as much concerned with the problem of getting white people to live in all-Negro units as they are with getting some Negroes to live in all-white units. They recognize, it seems, that the members of neither race ordinarily desire to force themselves on the other.

Mr. President, the policy of "scatteration" is nothing new to the Congress of the United States. I distinctly recall that such a policy was incorporated in the Omnibus Housing Bill reported by the Banking and Currency Committee of the Senate in 1958 but was deleted by an amendment I offered on the floor.

Mr. President, this report should be read by every member of this body before he votes on the question of continuing the existence of this Commission. A knowledge of what recommendations were made generally or, indeed, whether there were recommendations at all is not sufficient. There is much revealing language in this report for all its confusion and obscurity. I would like to give two illustrations.

As I mentioned when I was reviewing the section of the report which purported to deal with voting, the report took a diversion to lament the fact that some citizens were disinclined to serve on State registration boards. In this discussion the report attributes to such persons as one reason for their refusal to serve the "fear of being 'hounded' by the United States Civil Rights Commission." What further proof could be needed that the Commission itself is a principal instrument of racial strife and voting difficulties?

Even more revealing with regard to the attitude of some of the more avid integrationists on the Commission itself is a statement by Commissioner Hesburgh. I do not believe I have ever heard the Marxist philosophy more succinctly stated than in the words of Commissioner Hesburgh in his comments near the end of the report, where he said: "Again, the use of public money for the benefit of all, equal opportunity, is a cardinal principle."

The question before this body is whether to continue an ill-conceived instrument of racial strife, wielded under the influence of philosophies alien to all that true and patriotic Americans hold dear.

When the so-called civil rights bill of 1957 was considered by this body, I opposed the bill, including the creation of the Civil Rights Commission. Although I spoke at some length concerning the defects of the proposal to create such a body, my objections fell largely on emotion-closed ears. I would like to recall to the Senate some of my comments on what was at that time a proposed Civil Rights Commission. On that occasion, I said:

"Mr. President, I am opposed to the creation of a Commission on Civil Rights as proposed in Part I of H. R. 6127.

To begin with, there is absolutely no need or reason for the establishment of such a Commission. If there were any necessity for an investigation in the field of civil rights, such an investigation should be conducted by the States or by an appropriate Committee of the Congress, acting within the jurisdiction of congressional authority. It should not be done by a Commission.

I also object to Part I of H. R. 6127 because of the fact that it places duties upon the Commission and endows it with powers which no governmental commission should have.

In fact, Mr. President, the language of the bill proposing to establish this Commission is so broad and so general that it may encompass more evils than have yet been detected in it.

Under its duties and powers the Commission would be able to subpoena citizens to appear before it to answer questions on many subjects outside the scope

of elections and voting rights.

Section 104 (a) provides The Commission shall--
"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

Mr. President, the bill, in Part IV, contains an additional protection of the voting right of citizens above and beyond present State and Federal laws. Provision is made for enforcement of Part IV, and there were already sufficient enforcement provisions to carry out the intent of the existing State and Federal laws. I do not see how a Commission could enhance the investigative powers of law enforcement officers nor the enforcement and punitive authority of the courts.

I can see no valid reason why a Commission should be created, in addition to the legal enforcement procedures, unless the purpose is for the Commission to stir up litigation among our people.

This bill has been advertised, promoted, and ballyhooed as a right to vote bill. However, I want to cite two paragraphs which give broad authority for investigations other than alleged violations of a person's right to vote.

Section 104 (a) provides The Commission shall--
"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
and
"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

Instead of limiting the power of the Commission, these two paragraphs provide it with carte blanche authority to probe into and meddle into every phase of the relations existing between individuals which the Commission and members of its staff could conjure up.

I want to call particular attention to a divergence in language between paragraphs 2 and 3. Paragraph 2 refers to a study of "legal developments constituting a denial of equal protection." Paragraph 3 says "appraise the laws and policies of the Federal Government with respect to equal protection."

The significant thing here is the omission of the specific intent of paragraph 2. Although the language of paragraph 2 is obscure and omits a governmental reference, it obviously must refer to State and local governments, else it would be redundant and have no meaning at all.

Also, as I pointed out, investigations conducted under paragraphs 2 and 3 could go far afield from the

question of voting rights. The Commission could exert its efforts toward bringing about integration of the races in the schools, and elsewhere, under the authorization of these two paragraphs. Combining its authority to investigate on an unlimited scale and its authority to force witnesses to answer questions, the Commission would have a powerful weapon.

Mr. President, I do not believe the people of this country realize the virtually unlimited powers of inquiry which would be placed in the hands of this political Commission. While the Commission would have no power to implement its desires, I do not believe the people of this country want such a totalitarian type of "persuasion" imposed upon them.

Part I of H. R. 6127 purports to create a Civil Rights Commission. Actually, it would create a traveling investigation Commission.

Section 103 (b) of Part I also would place tremendous power within the grasp of the Attorney General with reference to members of the Commission "otherwise in the service of the Government." The clear implication is that whoever drafted this scheme to send traveling agents over the country intended to make use of certain members of the Executive Branch of the Federal Government. I don't believe it would be necessary to look farther than the Justice Department to determine where Commission members already in Government service would be secured. By placing his employees on the Commission, the Attorney

General would transform the traveling agents into an additional investigative arm of the Justice Department.

Mr. President, I next call attention to the potential abuse found in Section 102 (g) under the innocuous title, "Rules of Procedure of the Commission." That section provides that:

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year."

In an editorial of July 26, 1957, The Washington Post very correctly pointed out how this section could be used to imprison reporters and other citizens for disclosure of what a witness might voluntarily tell them. This editorial provides a penetrating and enlightening criticism of this section. Because of its pertinency and fine analysis, I shall read the last three paragraphs of the editorial which is entitled "Open Rights Hearings," which states:

"The bill contains an invitation to the commission to operate behind closed doors. It provides that 'if the commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate

any person, it shall...receive such evidence testimony in executive session...' Some closed sessions may be necessary to avoid unfair reflections upon individuals, but these should certainly be an exception to the general rule. In our opinion, this section ought to be rewritten in a more positive vein to provide that sessions of the commission should be open to the public, unless it should find that closed hearings were essential to avoid unfairness.

"The House also wrote into the bill a dangerous section providing for the fining or imprisonment for not more than one year of anyone who might 'release or use in public,' without the consent of the commission, any testimony taken behind closed doors. If the commission should choose to operate under cover, without any valid reason to do so, newspaper reporters and other citizens could be jailed for disclosure of what a witness might voluntarily tell them. This is a penalty that has been shunned even in matters affecting national security. Such a provision is an invitation to abuse and a serious menace to the right of the people to know about the activities of governmental agencies.

"It is well to remember that this would not be merely a study commission. In addition it would be under obligation to investigate allegations that persons were being deprived of their rights under the Fourteenth and Fifteenth Amendments. It could subpoena witnesses and documents and appeal to the courts for enforcement of such edicts. Its powers would be such that it should be held to scrupulous rules of fairness. To encourage the commission to operate in secret, and then to penalize news media and citizens for disclosing what should have been public in the first place, would be the sort of mistake that Congress ought to avoid at the outset."

Mr. President, I think the points made in the editorial are clear and valid. Secrecy in the activities of such a Commission could only lead to a denial of the rights of an individual rather than to protection of his rights.

Another subject which must not be passed over is the subpoena power of the Commission. Section 105 (f) provides that "subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the commission..."

Mr. President, many of the committees and special committees of the Congress do not have this power. The

Truman Commission on Civil Rights did not have it. The subpoena is a punitive measure, generally reserved for penal process whereby powers are granted to force testimony which would not otherwise be available. If the proposed commission were simply a fact-finding commission and non-political, the extreme power to force testimony by the use of a subpoena would not be needed.

Neither would the power contained in Section 105 (g) which provides that Federal courts shall have the power, upon application by the Attorney General, to issue "an order requiring" a witness to answer a subpoena of the commission and "any failure to obey such order of the court may be punished by said court as a contempt thereof."

The power of subpoena in the hands of a political commission and the additional power to enforce its subpoenas by court order diverge from the authority of the traditional American fact-finding commission.

I look with suspicion upon such a commission so endowed with authority, and I object to its establishment.

Mr. President, I want to discuss another reason, briefly, why I would be opposed to the establishment of the commission proposed in Part I of H. R. 6127. Every appropriation bill which has come before the Senate this year has been reduced by the Senate below the budget request. The people of this country have called upon the members of Congress to reduce the costs of government,

not to increase them by creating new agencies or commissions.

The advocates of the commission might argue that the cost of its operation would not be great, but nowhere in the records of the hearings have I found an estimate of what the total cost would be. If the commission were to exist only for the two years provided in the bill, the compensation and per diem allowance of commission members would amount to more than a quarter of a million dollars, not counting their travel allowances.

Since there is no limitation on the number of personnel which might be appointed by the Commission, there is no way to estimate the ultimate cost of personnel salaries and expenses. Since the commission is designed to travel over the country at will, very heavy travel expenses undoubtedly would be incurred.

The taxpayers would never know how many of their tax dollars were wasted by virtue of the seemingly innocuous language in Section 105 (e). Unknown, concealed costs are not, however, the only dangers lurking in that subsection. A serious departure from sound legislative procedure is also involved.

In the past, when creating an agency or commission, Congress retained control of its creation by the appropriation power. This is a wonderful check, Mr. President, against the abuse or misuse of commission authority. Scrupulous care should be taken to preserve it.

However, Section 105 (e) provides that:

"All Federal agencies shall cooperate fully with the commission to the end that it may effectively carry out its functions and duties."

Thus the Civil Rights Commission could call on the other governmental agencies to perform many of its tasks. Congressional control over the commission would be much less than if the commission had to depend on its own appropriations and would not be permitted to use the resources of other agencies. Once the commission is created, only another law can check its activity during the period of its existence.

Another thing that concerns me about this commission is the fact that once a government agency or commission is established, nothing else on earth so nearly approaches eternal existence as that government agency or commission. Mr. President, I fear that the two-year limitation placed upon the commission in this bill would simply be a starting point, and the people of this country should realize that at this time.

With further reference to Section 104 (a), I want to point out the use of the mandatory word "shall." This word requires the commission to investigate all sworn allegations submitted to the commission of any citizen allegedly being deprived of his right to vote.

But the provision neglects to require that such allegations be submitted by parties in interest--not simply by some meddler who seeks to create trouble

between other persons. This is another provision of this bill similar to Section 131 (c) which would permit the Attorney General to make the United States a party to a case without the consent of the party actually involved.

Another objection to 104 (a) is that under this provision a person could make an allegation to the commission, against a person who was not even a citizen of the same State. Even so, under the mandatory language of Section 104 (a), the commission would be required to make an investigation of the charges.

Since the commission is limited by Section 102 (k) to subpoenaing witnesses to hearings only within the State of residence of the witness, there would be no opportunity in such a situation for the accused to confront his accuser. Charges against a person should not be accepted by the commission unless the accuser is a citizen of the same State as the person he is charging with a violation of the law.

Also, Mr. President, once the commission has received the sworn allegation, there is no requirement that other testimony received relating to the allegation be taken under oath. Failure to make all persons giving testimony subject to perjury prosecutions in the event they testify to falsehoods would surely destroy the value of any such testimony received.

The commission could and might adopt a rule to require sworn testimony; but I should not like to see the Senate

leave that point to the discretion of the commission because, in my judgment, the Congress should require that practice to be followed.

Mr. President, as I stated earlier, it is my view that an inquiry into the field of civil rights, or so-called civil rights, is entirely unnecessary at this time. The laws of the States and the federal laws are being enforced effectively.

Should there come a time when information might be needed on this subject, the Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with deliberation and care. The appropriate committees of the Congress itself should hold hearings limited to the jurisdiction of the Congress, and the Congress should make its own determination as to the need for legislation.

There is no present indication that any such study will be needed."

Following these remarks, Mr. President, I discussed the constitutional objections to such a commission. Prior to the creation of the commission, I was bothered by grave questions as to the constitutionality of such an investigatory group. Passage of time since its creation has strengthened and reinforced my position against the constitutionality of the commission.

I did not and do not perceive from the debate on the so-called Civil Rights Act of 1957 that there was any intention by Senators to subject the commission to provisions of the Administrative Procedure Act. Had they dared, I strongly suspect that the proponents of that Act would have specifically negated the applicability of

the Administrative Procedure Act. The proponents of the 1957 Act wanted all they could get in the way of authority for their vicious unit of disharmony. They dreamed of a true "star chamber", cloaked with arbitrary persecution powers. In their obsession with agitating the race issue, they evidenced no concern whatsoever with true civil rights, or as I prefer to call them, individual liberties. Their extreme fanataticism on the issue of RACE was paramount and exclusive--without objectivity, without balance, and without respect for the "Supreme Law of the Land."

My conclusions are not products of speculation or conjecture, Mr. President. Section 102 of the Civil Rights Act of 1957 deals rather exhaustively, for an act of this type, with the rules and rule-making authority of the Civil Rights Commission. A perusal of this section reveals that it is designed almost exclusively as a grant of power to the commission, rather than a limitation for the protection of the rights of individuals. The text of this section is as follows:

See 118
"Sec. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105 (f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session, or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive \$4 for each day's attendance and for the time

necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business."

Mr. President, I invite the particular attention of the Senate to sub-paragraph (c) of Section 102: "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights."

Mr. President, seldom has a subsection been drafted by any Congress which has been so pregnant with basic deprivations and exclusions of the historical standards of fair play which permeates our jurisprudence, and which we loosely refer to as due-process. Let us examine some of those procedural safeguards which are denied by this section.

First, the right of a person appearing before the commission to be represented by counsel is negated. Substituted for representation by

counsel is the right--if it can be so broadly denominated--to be accompanied by counsel. Moral support is no substitute for an active defense. Such a provision can best be compared to allowing an accused person to have a few sympathizers in the audience when he is sentenced.

But there is more! The ridiculous is made fantastic! The right to be accompanied by counsel is itself--weak as it is--limited to one exclusive purpose--that of advising the witness on his constitutional rights. Not on his legal rights, Mr. President, but only on his constitutional rights. I wonder, Mr. President, if the drafters of this language contemplated a monitoring of the advice of the accompanying counsel to assure that counsel would not go astray and speak to the witness concerning some statutory right which might accrue to the benefit of the witness.

Does this subsection indicate a concern with individual liberty, or does it rather have the appearance of a deceitful gloss that gives an impression of preserving due process while actually emasculating it?

The proponents of this legislation also wanted to insure that the accompanying counsel could be prevented from conducting themselves as conscientious attorneys, Mr. President--thus, was included subsection (d) which reads: "The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings." Judging from the overall import of Section 102, the "un" which prefixes "professional" in subsection (d) must have been included by oversight. Consistency belies its inclusion.

Subsection (g) established the "star chamber" session of the commission. This subsection so completely ignores constitutional safeguards contained in the Constitution and imposed by the people

for the protection of individual liberties, that one would logically conclude that its proponents had formerly existed in a vacuum, rather than in a democratic society. It is completely incompatible with freedom of speech and the press. It precludes the right of confrontation of accuser by the accused, as well as the right of cross-examination. Its purport is reinforced by subsection (i), which specifies that a witness may purchase a copy of his own testimony, but omits any authorization for a witness to even see the testimony of an accuser.

Mr. President, I would be the first to admit,--nay, assert--that the requirements of "due process" vary considerably, depending on the proceedings to which they are applied. The requirements are most strict when applied to a criminal prosecution. In some proceedings where no basic right of the individual is involved, little, if any, application of due process safeguards are demanded by the Constitution nor required by good conscience.

It should be clear, however, that a criminal prosecution includes more than the formal trial itself. Indeed, historically, much of the concern which the courts have evidenced over the application of due process in criminal prosecutions has been in the pre-trial area of apprehension, and preparation of the prosecution case against the accused. This is the precise area into which the investigations of the Civil Rights Commission were intended to, and in fact, did, fall.

By the terms of the Act itself, investigations by the commission must be predicated on a complaint that either a statute or the Constitution has been violated. The commission was given, and has exercised, the power to subpoena those accused. Part II and Part III strengthened the machinery for prosecution of violations established by the commission.

There can be but one logical conclusion. The Civil Rights Commission is unconstitutional.

If there be any doubts--and I can conceive no basis for doubt--of the unconstitutionality of this commission, stemming specifically from the rule-making power granted in Section 102, consider the rules of the commission. They are as follows.

See 126
"1. Under Public Law 85-315, Section 105(f), the Commission on Civil Rights may hold hearings and issue subpoenas or authorize a subcommittee to hold hearings and issue subpoenas under the following conditions:

The Commission or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102(j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

2. All such hearings of the Commission will be governed by the following statutory Rules of Procedure provided in Section 102 of Public Law 85-315:

(a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge

of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive \$4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

3. In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85-315, incorporated in Rule 2 above, shall be applicable

to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 105(f) of Public Law 85-315, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission or of any sub-committee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at a meeting at which at least a quorum of four members is present.

(d) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission by the Chairman or by the Chairman upon the request of a member of the Commission

(e) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

4. Public Law 85-315, Section 105(g) provides that in case of contumacy or refusal to obey a subpoena of either the Commission or a subcommittee thereof, any district court of the United States

or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

Mr. President, these are the rules as approved and adopted by the commission July 1, 1958. They are beyond question responsive to the terms of the Act which created the commission. They emphasize by implementation and expansion the unconstitutionality of the act creating the commission.

I am not alone in my assertions as to the constitutional implications of this Statute, Mr. President. For instance, the State of Arkansas, through its Attorney General, filed a brief with the Federal District Court in Louisiana, which said in part:

See 149 { "The Civil Rights Commission is extraordinary, if not unique, in that it intends to function much the same as a congressional investigating committee and if its apparent interpretation of the law creating it (Civil Rights Act, Public Law, 85-315, Title 42, USCA § 1975 et seq.) is sustained it possesses all the power and authority of a "Star-Chamber" undertaking. It is the assumption by the Commission or the delegation by the Congress of this power and authority which gives rise to the

serious question of the Committee's legal existance. If the Civil Rights Commission is not subject to the provisions of the Administrative Procedure Act (5 USCA, §§ 1001 et seq.), then that portion of the Civil Rights Act creating the Commission is invalid as a violation of Article I and Amendments 5, 6 and 9 of the Constitution of the United States.

I.

THAT PORTION OF THE CIVIL RIGHTS ACT CREATING THE CIVIL RIGHTS COMMISSION IS AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY BY THE CONGRESS AND IT DEPRIVES WITNESSES BEFORE IT OF THEIR RIGHTS AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES.

The right of Congress to investigate through its own agency is unquestioned. This right is derived from its determination or duty to legislate upon particular subject matter. It may be well to point out here that in the field assigned to the Civil Rights Commission there was companion remedial legislation (42 USCA § 1971) thoroughly covering the subject matter the Commission was supposed to investigate. One may obliquely inquire at this point as to what further legislation could be contemplated based on any investigation and finding made by the Civil Rights Commission. It is true that in U.S. v. Rains, 172 F. Supp. 557, Section 1971, paragraph (c) was held unconstitutional but the remedy, if any, for that deficiency will be found in constitutional legislation, not further commission investigation.

It is well to keep in mind that this Commission is greatly dissimilar to the great body of regulatory agencies which possess investigative powers. Those regulatory agencies investigate with a view to determining facts in relation to violations, compliance, etc., with the law they administer. The Civil Rights Commission

investigates for the sake of investigation. There is no framework of law in which the Commission operates; in fact, there is no law to administer and no authority to regulate. As pointed out in complainants' trial brief, the Commission is not limited to the investigation of voting deprivations committed or caused by state officers or even where an individual acting under the guise of state authority deprives some person of his voting privilege, but extends to every possible situation irrespective of the authority of Congress to legislate with reference to that situation. This fact in itself is sufficient to render the Act unconstitutional. See McGrain v. Daugherty, 273 U.S. 135; Kilbourn v. Thompson, 103 U.S. 168; U.S. v. DiCarlo, 102 F. Supp. 597.

If this Commission has been clothed with all the power and authority of Congress, and the law creating the Commission is very reminiscent of a House or Senate resolution creating a special investigating committee of its members, it must, of course, be bound by at least the same ground rules and constitutional limitations. If it can be successfully argued that the Civil Rights Commission is not subject to the Administrative Procedure Act, then an inquiry must be made into what rules, regulations and laws do apply to the Commission's proceedings. The only place one can find the answer is in the Act itself, and even a casual reading of the Act indicates that there is no answer. To examine these provisions in the light of what the Commission considers the limitations are, is to be startled if not shocked by the ignoring of the constitutional rights of individuals who may be called before it. The rules of the committee reflect

the validity of this statement. The authority to make these rules must be inferred from the provision of Section 1975a (there is no express grant of such authority). Section 1975a (c) does allow witnesses to be accompanied by counsel "for the purpose of advising them concerning their constitutional rights." It does not provide that a witness may assert his constitutional rights before the Commission. If this last appears to be an unworthy observation it is no less unworthy than the Commission's conclusion regarding a witness's right to be informed of the nature of the investigation or his right to cross-examine other witnesses. The Commission's power to investigate must be exercised with due respect for the rights of witnesses appearing before it. See Sinclair v. U.S., 279 U.S. 263. The Commission by its rules and attitude has indicated that it considers itself and its activities above the requirements of the constitution and the restriction of fair play. The real difficulty here is that Congress has not provided any standard or means of accomplishing the Commission's somewhat hazy mission. Such a standard or means must necessarily be present in order to validate the Commission's existence. See U.S. v. C. Thomas Stores, 49 F. Supp. 111; U.S. v. Wright, 48 F. Supp. 687. The Civil Rights Commission, under the guise of declaring procedural rules and investigative policy, has legislated substantive laws out of existence. If the Commission is correct in this assumption of such broad "rule making" power, then Congress has delegated legislative authority which even Congress itself may not possess. It is no answer to the problem posed here to say that the complainants or other witnesses may assert their rights when denied by the Commission

through resort to the Court. To single shot every invalid "rule" which has or might be promulgated by the Commission would place an insurmountable burden on those subject to appearance before it.

II.

THE CIVIL RIGHTS COMMISSION IS SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT.

The Civil Rights Commission is operating and acting with the expressed sanction of the Congress behind it and as such, is an agency of the government. Laster v. Guy F. Atkinson Co., 176 Fed. 2nd 984; Donahue v. George A. Fuller Co., 104 F. Supp. 145. As an agency of the government, the Commission's function is subject to the Administrative Procedure Act, unless excepted. The exceptions to the Administrative Procedure Act are few and simple and a consideration of the exceptions set forth in the Act show that the only possible way in which the Civil Rights Commission could be excepted is through a proper and express delegation of authority by law. There is nothing in the Civil Rights Act creating the Commission that even hints of an exception.

'Exemptions from the terms of the Administrative Procedure Act are not lightly to be presumed in view of the statement in § 12 of the Act that modifications must be express.' Marcello v. Bonds, 349 U.S. 302.

The protection afforded by the Administrative Procedure Act should be equally available to protect personal rights as well as property rights. L. A. Tucker Truck Lines v. U.S., 100 F. Supp.

432. The intended course of the Commission under its rules and pronouncements as reflected in the complaint virtually strips the complainants of all the protection sought to be afforded by the Procedure Act. This is exactly the sort of conduct the Administrative Procedure Act was intended to prevent.

"The Administrative Procedure Act was framed as a check upon administrators whose zeal might otherwise carry them to excess not contemplated in the legislation creating their offices. It creates safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights." U.S. v. Morton Salt Co., 338 U. S. 632.

It is not necessary to engage in extensive analysis of the terms of 42 USCA § 1975. The Civil Rights Commission is so obviously an agency of the government that argument to the contrary is facetious. It is equally obvious that there is no statement exempting the Commission from the provisions of the Administrative Procedure Act and any rules making authority the Commission may possess must be exercised only within the limitations placed upon it by the Administrative Procedure Act."

Mr. President, the Attorney General of the sovereign State of Arkansas is referring in this brief to the body which the Congress created in 1957, and into which it is proposed that we now breathe life for another two years.

Mr. President, we have more than assertions of unconstitutionality to face in assessing this proposal to extend the life of the Civil Rights Commission. We have a finding of the Court--not a State Court--

but a Federal Court, mind you. The finding of the court to which I refer is in the decision of the United States District Court for the Western District of Louisiana in the case of Margaret M. Larche, v. John A. Hannah, rendered July 12, 1959. The order of the court is as follows:

RULING ON APPLICATIONS FOR TEMPORARY RESTRAINING ORDERS

"We are called upon here to pass tentatively upon one of the burning issues of our time -- the propriety and validity of the Rules and Proceedings of the Civil Rights Commission, as established by Congress in September, 1957.

"That Commission now proposes to hold a hearing, in the Federal Court room at Shreveport, Louisiana, on July 13, 1959, to investigate purported violations of the civil voting rights of some 67 persons, who are said to have filed sworn complaints with the Commission. Pursuant to, and in implementation of, its plans, the Commission has caused subpoenas, and subpoenas duces tecum, to be served upon the plaintiffs in these suits, commanding them to be present and give testimony at the hearing, and requiring the 16 Registrars of Voters, who are plaintiffs in Civil Action No. 7479, to bring with them, for inspection and copying by the Commission, a large number of records from their offices.

"These suits, brought against the members of the Commission, and the Commission itself, were filed on July 10, 1959, and are addressed to the equitable powers of this Court. They seek to stay the effectiveness of the Commission's subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing itself, which, plaintiffs aver, under the Rules of Procedure

adopted by the Commission, would violate their fundamental constitutional rights and cause them immediate and irreparable damage. Moreover, praying that a three-judge court be convened for that purpose, the Registrar-plaintiffs ask that the Act creating the Commission be declared violative of the Federal Constitution, and thus unenforceable.

"Detailing their complaints, supported by sworn affidavits and exhibits attached, (and here briefly paraphrased), the Registrar-plaintiffs, in Civil Action No. 7479, allege that between June 29, 1959, and July 6, 1959, each of them were served with subpoenas and subpoenas duces tecum, issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959, and to bring their records with them; that they have not been informed of the nature of the complaint or complaints against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana, verbally and in writing, that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine the written complaints filed against them, nor would it divulge the name or names of the secret complainants, all of which is arbitrary and unreasonable, and in violation of plaintiffs' fundamental rights.

"They further aver that they, at all times, have complied with the laws of the State of Louisiana, but that the subpoenas served upon them would require them to violate such laws, in that the Registrars' records legally may not be removed from their offices, except 'upon an order of a competent court', criminal penalties being provided for violations of these statutes; and that the Commission is not a 'competent court'. Hence, they say, to comply with the subpoenas, they would be violating the State laws, and subjecting themselves to the penalties thus provided.

"These plaintiffs further allege that, attached to the subpoenas served upon them, was a mimeographed document entitled 'Rules of Procedure for hearings of the Commission on Civil Rights' in which appears the following: '(i) Interrogation of witnessess shall be conducted only by members of the Commission or by authorized staff personnel'; and that thereby plaintiffs are deprived of their constitutional right to cross-examine witnessess who may testify against them. They contend that the Commission and its members thus are acting in an ultra vires manner in 1) attempting to force the plaintiffs to testify at the proposed hearing without first advising them of the nature of the complaint or complaints existing; 2) without allowing plaintiffs to be confronted by the complaining witnesses: 3) not allowing plaintiffs

to have counsel empowered to fully represent their interests in such hearing; 4) not allowing cross-examination of the complaining witnesses; and 5) causing irreparable damage to plaintiffs by requiring them to violate the Laws of Louisiana, which would subject them to serious criminal penalties. In their brief, they also urge, as a direct incident of the hearing itself, with unnamed and unknown witnesses testifying against them, not subject to cross-examination by plaintiff's counsel, that they will be wrongfully accused of violations of both Federal and State laws, without adequate opportunity to disprove such accusations, and thus be held up, by the Commission's actions, to public opprobrium and scorn, all to their irreparable injury and damage.

"They further contend that the Commission, being an agency of the Executive branch of the Federal Government, is subject to the provisions of the Administrative Procedure Act, and, as such, is required to state explicitly the charges against plaintiffs, to permit them to be confronted with the witnesses against them, and to allow their counsel fully to cross-examine such witnesses. Accordingly, these plaintiffs seek the relief hereinabove outlined.

"In general, the plaintiffs in Civil Action No. 7480, who are individual citizens of Louisiana, make the same allegations and contentions as those in

No. 7479, except that they have not been called upon to produce any official records. They do not challenge the constitutionality of the Act creating the Commission, but otherwise their prayer for relief is substantially similar to that in No. 7479.

"Several days prior to July 10, 1959, we were advised by plaintiffs' counsel that they would file these suits on the date indicated. While, as a general rule, applications for temporary restraining orders are considered ex parte, solely on the face of the verified complaint and any attached documents, because of the national importance of the matters involved, we immediately notified counsel for the Commission, and its Vice-Chairman, Honorable Robert G. Storey (a personal friend of the Court's, of long standing) of our information, and invited them to be present for a hearing on the applications. The suits were filed at 1:30 P. M. on July 10, and at 2:00 P. M., in open Court, these gentlemen, and counsel for plaintiffs, being present, we convened Court, but immediately recessed in order to give the Commission's representatives opportunity to study the complaints and briefs filed by plaintiffs. At 3:30 P. M., we reconvened and heard oral arguments, from both sides, until 5:20 P. M., at which time the matter of the restraining orders was submitted for decision on the oral arguments and briefs filed by the proponents and opponents of the

applications. We have considered the able arguments, studied the respective briefs and authorities cited, and now proceed to our ruling. Necessarily, because of the time element, we have been compelled, under great pressure, to consider the questions rather hastily; and we reserve the right to alter our views, if necessary, after more mature deliberation.

"The Court has jurisdiction. 28 U.S.C.A. §§ 1331, 1332, 2201, 2282, 2284. Jones v. Securities Commission, 298 U. S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.

"We are not strongly impressed with the Registrar--plaintiffs' contention that the subpoenas duces tecum, if complied with, would subject them to criminal penalties under Louisiana law. Literally, of course, if they directly complied without more, they are correct in their understanding of the State law. Pratically, however, another and different aspect is presented, for under the Civil Rights Commission Act they can refuse to produce the records, without penalties of any kind, and the only recourse the Commission would have would be to request the Attorney General of the United States to apply to this Court, under 42 U.S.C.A. 1975d(g) for an order requiring their production. Plaintiffs then would be protected against State prosecution by the very terms of LSA-R.S. 18:236, as well as by LSA-R.S. 18:169 for this Court clearly is a 'competent court', within the meaning of those Statutes.

"Likewise, plaintiffs would suffer no immediate federal penalties under the Act for refusal either to appear or to testify, but would be subject to an enforcement order from this Court, which would see to it that their constitutional rights against self-incrimination are adequately protected. Moreover, under the Act, since their counsel are entitled to be present, they could be advised, at each step of the proceedings, whether to claim the protection of the Fifth Amendment, even though, in this day, the general public has come to consider such a claim as tantamount to a plea of guilty, particularly in response to 'loaded' questions.

"We are strongly of the opinion, however, that plaintiffs' remaining grounds for immediate relief are well taken:

"First, it appears rather clear, at this juncture, that the Civil Rights Commission is an 'agency' of the Executive branch of the United States, within the meaning of that term as defined at 5 U.S.C.A. § 1001 (a). See also 42 U.S.C.A. § 1975 (a). It performs quasi-judicial functions in its hearings, its fact findings, its studies of 'legal developments constituting a denial of equal protection of the laws under the Constitution', and its appraisal of 'the laws and policies of the Federal Government' in the same respect. It 'adjudicates' by its rulings upon the admissibility of evidence at its hearings and by its determinations of what is or

is not the truth in matters before it. Thus we think that the Commission is subject to the provisions of section 4 of the Administrative Procedure Act, which requires, among other things that persons affected by agency action ' . . . shall be timely informed of the matters of fact and law asserted.' Here that would encompass the nature of the charges filed against plaintiffs, as well as the matters of fact and law wherein the complainants' voting rights allegedly have been violated. The Commission also is subject to section 6 which would require it to grant plaintiffs the right 'to conduct such cross-examination as may be required for a full and true disclosure of the facts. This, by its Rules, the Commission refuses to do, and in so doing, regardless of its well intentioned motives, it violates the terms of that Act. Plaintiffs are entitled, therefore, to protection against these Rules, which would deprive them of their plain rights under the Act.

"Second, while the statute creating the Commission inferentially permits it to adopt reasonable Rules, 42 U.S.C.A. § 1975 (b), there is no provision whatsoever in the law to the effect that such Rules may include those here complained of, which plainly violate plaintiffs' basic rights to know in advance with what they are charged, to be confronted by the witnesses against them, and to cross-examine their accusers. We cannot believe that

Congress intended to deny these fundamental rights to anyone, and because of such belief it is our opinion that these Rules of the Commission are ultra vires and unenforceable. Therefore, plaintiffs are entitled to immediate relief against them.

"Third, entirely aside from the statutory questions just discussed, the Courts of the United States, and their Anglo-Saxon predecessors, always have seen to it that, in hearings or trials of all kinds, persons accused of violating laws must be adequately advised of the charges against them, confronted by their accusers, and permitted to search for the truth through thorough cross-examination. In Jones v. Securities Commission, 298 U. S. 1, 27, 57 S. Ct. 654, 80 L. Ed. 1015, the Supreme Court said:

" . . . 'A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end.'

"The fear that some malefactor may go unwhipped of justice weighs as nothing against

this just and strong condemnation of a practice so odious . . .

"The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing to light . . ."

In Morgan, et al v. United States, et al, 304 U.S. 1, 14, 20, 25, 58 S. Ct. 773, 82 D. Ed 1129, involving an administrative hearing the Court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial

character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand ' a fair and open hearing,' -- essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.'" . . .

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities . . .

" 'Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command . . . ' "

"In the most recent decision on this subject, handed down by the Supreme Court on June 29, 1959, Greene v. McElroy, No. 180, October 1958 Term _____ U. S. _____, _____ S. Ct. _____, _____ L. Ed. _____, 29 L. W. 4528, 4534, 4538, and speaking through Chief Justice Warren, the following language is found:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e. g., Mattox v. United States, 156 U. S. 237, 242-244; Kirby v. United States, 174 U. S. 47; Motes v. United States, 178 U. S. 458, 474; In re Oliver, 333 U. S. 257, 273, but also in all types of cases where administrative and regulatory action

were under scrutiny. E. g., Southern R. Co. v. Virginia, 290 U. S. 190; Ohio Bell Telephone Co. v. Commission, 301 U. S. 292; Morgan v. United States, 304 U. S. 1, 19; Carter v. Kubler, 320 U. S. 243; Reilly v. Pinkus, 338 U. S. 269.

Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. Joint Anti-fascist Committee v. McGrath, 341 U. S. 168-169 (concurring opinion).

"Professor Wigmore, commenting on the importance of cross examination, states in his treatise, 5 Wigmore on Evidence (3d Ed. 1949) § 1367:

"For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience."

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of

due process. See, e. g., The Japanese Immigrant Case, 189 U. S. 86, 101; Dismuke v. United States, 297 U. S. 167, 172; Ex parte Endo, 323 U. S. 283, 229-300; American Power Co. v. Securities and Exchange Commission, 329 U. S. 90, 107-108; Hannegan v. Esquire, 327 U. S. 146, 156; Wong Yang Sung v. McGrath, 339 U. S. 33, 49. Cf. Anniston Mfg. Co. v. Davis, 301 U. S. 337; United States v. Rumely, 345 U. S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

"These authorities, therefore, clearly establish additional reasons why plaintiffs should be granted immediate relief.

"Fourth, there is every reason to believe, considering that the Commission has announced its receipt of complaints from some 67 persons, that those persons will testify that plaintiffs have violated either the State or Federal laws, or both. Plaintiffs thus will be condemned out of the mouths of these witnesses, and plaintiffs' testimony alone, without having the right to cross-examine and thereby to test the truth of such assertions, may not be adequate to meet or overcome the charges, thus permitting plaintiffs to be stigmatized and help^d up, before the eyes of the nation

to opprobrium and scorn. Moreover, not knowing in advance the exact nature of the charges to be made against them, some of the plaintiffs, whose official domiciles are at varying distances up to 250 miles from Shreveport, may not be able physically to obtain the presence of witnesses of their own, who might negate or disprove the claims of the complaining witnesses, especially since the Commission has announced that its hearing will last only one day.

"These are further solid reasons, showing possible or probably irreparable injury to plaintiffs, which justify their being granted immediate relief.

"Fifth, and finally, plaintiffs raise very serious questions regarding the validity -- the constitutionality -- of the very Act which created the Commission. We do not intimate here any opinion as to the constitutionality of the Statute, for that is a matter to be decided by the three-judge court to be convened by the Chief Judge of this Circuit. However, the seriousness of the attack must be noted in considering whether a temporary restraining order should be issued, to stay the effectiveness of the Statute until its validity vel non can be determined by the three-judge court after hearing on plaintiffs' application for an interlocutory injunction. See Ohio Oil co. v. Conway, 279 U. S. 813, 49 S. Ct. 256, 73 L. Ed. 972, where the Supreme Court stated, in a per curiam opinion:

"The application for an interlocutory injunction was submitted on ex parte affidavits which are harmonious

in some particulars and contradictory in other. The affidavits, especially those for the defendant, are open to the criticism that on some points mere conclusions are given instead of primary facts. But enough appears to make it plain that there is a real dispute over material questions of fact which can not be satisfactorily resolved upon the present affidavits and yet must be resolved before the constitutional validity of the amendatory statute can be determined.

"Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. Love v. Atchison, Topeka & Sante Fe R. Co., 185 Fed. 321, 331-332."

"In Crockett v. Hortman, 101 F. Supp. 111, 115, at page 115, Judge Wright, of the Eastern District of Louisiana, dealing with the constitutionality of a State statute, said:

"Where as here the questions presented by an application for a temporary injunction are grave, and the injury to the moving parties will be certain and irreparable if the application be denied and the final

decree be in their favor, while if the injunction be granted the injury to opposing parties, even if the final decree be in their favor, will be inconsiderable, the injunction should be granted. Ohio Oil Co. v. Conway, 279 U. S. 813, 49 S. Ct. 256, 73 L. Ed. 972.

"The determination of the grave constitutional issues presented in this case should not be decided without a trial on the merits, Polk Co. v. Clover, 305, U. S. 5, 59 S. Ct. 15, 83 L. Ed. 6, and a temporary injunction should be issued in order that the status quo may be preserved until that time."

"To the same effect, see also Burton, et al. v. Matanuska Valley Lines, Inc., 244 F. 2d 647.

"This, then, is another ground upon which plaintiffs are entitled to the immediate relief they seek.

"For these reasons, the application for temporary restraining orders will be GRANTED.

"THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, on this the 12th day of July, 1959."

Mr. President, how can we, in the face of this court order, extend the life of the Civil Rights Commission without violating the oath of each of us to uphold the Constitution? Would not such an extension necessarily imply Congressional endorsement of the rules of the commission, and of the commission's disinclination to act pursuant to the Administrative Procedure Act? We need to remind ourselves that we are here to uphold the Constitution and represent the people of the several States -- not to vent our

emotions in legislation or advance our personal political fortunes.

The fact that an appeal from the District Court decision is now pending before a three-judge court does not mitigate against my point, Mr. President. In fact, it emphasizes its validity. The court on appeal could not ignore the action of Congress in extending the life of the commission. Necessarily, and properly, the court would have to assume that Congress acted with full knowledge of the order of injunction.

Mr. President, for what purpose do the proponents of this measure propose that Congress so flagrantly violate the Constitution? What is the nature of the goal which is so imperative that individual liberty must be trampled in the dust?

We can only judge the proposed future of the Civil Rights Commission on its past actions and record. It has functioned for a long enough period to appraise its worth. In 1957, the proponents of the so-called Civil Rights Bill predicted that the commission would uncover the most dire and tragic situations existing in the field of voting rights. The record shows how wrong they were. As of June 30, 1959, the commission had received a total of only 1036 complaints, sworn and unsworn. Out of these complaints, on any subject within the jurisdiction of the commission, only 254 were by sworn affidavits.

The number of complaints in the voting field is even more indicative of the lack of need for the commission. Out of the millions of voters in this country, the commission has received but 315 complaints, sworn and unsworn. In my own State of South Carolina there were three complaints, not a one of which

was sworn. Even were there no constitutional question involved in the proposed extension of the commission's existence, we could not justify, from a simple policy standpoint, the expenditure of the funds necessary to sustain this useless agency.

No one knows the uselessness of the commission, nor the folly of continuing it, better than those who served as members of the commission. Their statements, although guarded, indicate an extreme lack of enthusiasm which belies any sense of accomplishment. As Dr. Hannah, the Chairman of the Commission, expressed it, that in the period he had tried it, he had found "there is no right answer to all sides". His attitude is evidently shared by his fellow commissioners who have been reported as expressing reluctance to serve beyond the legal life of the Commission as established in 1957.

It is obvious, Mr. President, that the attempt to extend the Commission is a propaganda effort, done in defiance of the Constitution.